



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Grewal et al v. Super Deal Furniture & Mattress Warehouse Ltd.*,
2019 BCCRT 1116

B E T W E E N :

JASVIR GREWAL and HARPAL GREWAL

APPLICANTS

A N D :

SUPER DEAL FURNITURE & MATTRESS WAREHOUSE LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicants, Jasvir Grewal and Harpal Grewal, bought 2 custom-made sofa sets from the respondent, Super Deal Furniture & Mattress Warehouse Ltd. The applicants say the sofas they received from the respondent were damaged, dirty,

and the wrong colour. They want the respondent to refund them \$5,000 for the 3-piece sofa set.

2. The respondent denies that the sofas were the wrong colour or that they were damaged or dirty at the time of delivery, and says any damage was caused by the applicants.
3. The applicants initially named Hargurchet Singh Gill, the respondent's owner, as a respondent, but they have since withdrawn their claims against him. I have amended the style of cause accordingly.
4. The applicants are represented by their daughter L.G., a non-legal representative. The respondent is represented by Mr. Gill, its owner.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "they said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's

mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under tribunal rule 9.3 (2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - a. order a party to do or stop doing something:
 - b. order a party to pay money:
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the applicants are entitled to a \$5,000 refund for the 3-piece sofa set they bought from the respondent.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicants must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
12. The parties agree that on December 2, 2017 the applicants bought 2 custom-made sofa sets from the respondent. The evidence indicates that 1 of these sets was a 3-

piece set including a sofa, loveseat and chair, and the other set was a sectional sofa. At the same time the applicants also bought a dining table and 6 chairs, which are not the subject of this dispute. The total cost of all this furniture was \$8,000. The applicants paid a \$4,000 deposit at that time. The parties agree that the respondent told the applicants the sofas would be ready for pick-up on December 12, 2017.

13. It is undisputed that on December 12, 2017 the applicants went to the respondent's store and paid the remaining \$4,000 balance of their furniture purchase. The parties provided very different versions of what happened from that point onwards.
14. The applicants say the sofas were not ready on December 12, 2017, so they were unable to inspect them. They say that if the sofas were ready that day they would have picked them up from the respondent's store, as per their agreement. They say the respondent did not deliver the sofas until 7:00 p.m. on December 15, 2017, and the respondent's delivery team unloaded the sofas from its truck and loaded them into the applicants' moving truck.
15. The applicants say the sofas were not covered in any protective wrapping, and that they were damaged and dirty floor models. They submitted a photo of 2 sofas without protective wrapping stacked on top of each other inside what appears to be a truck. The date stamp on the photo shows it was taken on December 15, 2017 at 7:01 p.m., which I accept. The applicants submitted several other photos showing what appear to be 2 different damaged sofas. It is unclear whether these sofas were part of the 3-piece set or the sectional.
16. In contrast, the respondent says the sofas were ready on December 12, 2017 and the applicants inspected them in the store to their satisfaction. It says it covered the sofas in protective wrapping and delivered them to the applicants that day between 5:00 and 5:30 p.m. It did not explain why it delivered the sofas on that date when it previously agreed the applicants would pick them up from the store that day. The respondent submitted a statement from its former employee, A.G., who delivered the sofas. A.G. said the applicants and their family members unloaded the sofas from the respondent's truck and were very rough with them.

17. The respondent does not address the discrepancy in the delivery dates between its version of events and the applicant's. I find this hurts the respondent's position, since the only contemporaneous evidence before me is the photo of the stacked sofas taken on December 15, 2018. The respondent also does not address why the sofas in that photo are not wrapped in a protective cover. The respondent says that if the sofas were damaged and dirty as alleged, the applicants would not have accepted their delivery. However, the applicants say it was dark when the respondent delivered the sofas, and they did not notice the damage until the next day, December 16, 2017, once they had moved to Vancouver Island.
18. On balance, I prefer the applicants' version of events up to this point. I find the respondent's evidence is internally inconsistent as it agrees the applicants were to pick up the sofas on December 12, 2017 but also says it delivered the sofas on that date. I also find the respondent's failure to address the discrepancy in delivery dates and whether or not the sofas were wrapped to be evasive. Therefore, I find the respondent delivered the sofas to the applicants on December 15, 2017 and that 2 of the sofas were damaged, as shown in the photographs.
19. The applicants say they informed the respondent about their dissatisfaction with the sofas on December 16, 2017, at which time they say the respondent acknowledged the problems with the sofas and agreed to have new ones made and delivered to them on Vancouver Island after the holidays. The respondent says that at some point after delivering the sofas to the applicants they returned to the store yelling, screaming and crying about their sofas. The respondent says that as a goodwill gesture it agreed to re-manufacture 2 sofas the applicants had damaged themselves and deliver them to Vancouver Island.
20. Despite the discrepancies in the parties' evidence on this point, none of which is supported by documentary evidence, it is undisputed that at some point before April 2018 the respondent agreed to deliver at least 2 new sofas to the applicants on Vancouver Island for no charge. There is no evidence of what the parties agreed to

do with the 2 damaged sofas already in the applicants' possession. It is also undisputed that the respondent attempted to deliver the sofas in April 2018.

21. The applicants say the sofas the respondent delivered in April 2018 were the wrong colour, so they did not accept the delivery. They did not specify the colour they ordered or the colour of the delivered sofas, and there are no photos in evidence of these new sofas. The respondent says when its delivery team arrived at the applicants' home on Vancouver Island the applicants were rude and used abusive language. The respondent says its delivery team refused to unload the truck under such conditions and returned to Vancouver with the sofas. A.G.'s statement, along with a statement from G.S., another former member of the respondent's delivery team, both support the respondent's version of events.
22. On balance, I prefer the applicants' evidence on this point. I have already found some of the facts in A.G.'s statement to be inaccurate with respect to the December delivery, so I place little weight on his statement. The applicants do not allege that the sofas the respondent delivered in April 2018 were damaged or had anything wrong with them aside from being the wrong colour, and I find they would have had no other reason to refuse the delivery. I find the sofas the respondent delivered in April 2018 were not the colour the applicant ordered.
23. The parties agree that on May 14, 2018, the respondent emailed the applicant the \$8,000 invoice for their furniture purchase which is dated December 2, 2017. The invoice states that exchanges must be made within 10 days of the purchase date, the respondent is not responsible for any wear and tear, and any physical damage or misuse of the sofas would void any warranty. The applicants say the respondent never told them about these terms before they received the invoice, and there is no evidence it did so. The applicants submitted text messages their daughter sent to the respondent on December 18, 19, and 20, 2017 requesting the invoice for the applicants' purchases. I am satisfied that the applicants were not aware of any of the terms in the invoice at the time they bought the furniture in December 2017.

24. It is undisputed that in late May 2018 the applicants returned to the respondent's store expressing their dissatisfaction with the sofas. The applicants say that during that visit the respondent told them it would deliver new sofas to them in the correct colour by June 2018, but it never did. However, the only evidence the applicants submitted in support of this allegation are 4 videos they took during this May 2018 meeting, but the people in the video are not speaking English. Since the applicants provided no translated transcript of the conversations in the video, I place no weight on this evidence.
25. The respondent denies that it agreed to deliver new sofas to the applicant in June 2018. In the absence of any other evidence to support the applicants' version of events, I find the applicants have not established that the respondent agreed to deliver new sofas in a different colour to the applicants in June 2018, or at all.
26. The applicants want a \$5,000 refund for the 3-piece sofa set. However, on the evidence before me I have found that only 2 sofas were damaged. I find I cannot determine from these photos whether these 2 sofas were part of the 3-piece set or the sectional. The applicants also failed to provide evidence of the cost of repairing or replacing the damaged sofas. I find the applicants have not established that they are entitled to a refund of the entire 3-piece sofa set. However, since I have found the respondent delivered 2 damaged sofas, I find the applicants are entitled to some compensation. Therefore, on a judgment basis, I find the applicants are entitled to \$2,000 for the damaged furniture.
27. The *Court Order Interest Act* applies to the tribunal. The applicants are entitled to pre-judgment interest on the \$2,000 calculated from December 15, 2017, which is the date I have found the respondent delivered the sofas, to the date of this decision. This equals \$55.27.
28. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the applicants were only partially successful I find they are entitled to

reimbursement of half their \$175 paid tribunal fees, so \$87.50. They have also claimed \$14.66 in dispute-related expenses for postage, which I find reasonable in the circumstances. Therefore, I find the applicants are entitled to half their dispute-related expenses, in the amount of \$7.33.

ORDERS

29. Within 14 days of the date of this order, I order the respondent to pay the applicants a total of \$2,150.10, broken down as follows:
 - a. \$2,000 for damaged furniture,
 - b. \$55.27 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$94.83, for \$87.50 in tribunal fees and \$7.33 for dispute-related expenses.
30. The applicants are entitled to post-judgment interest, as applicable.
31. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
32. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Sarah Orr, Tribunal Member